

APPELLATE CIVIL.

Before Mr. Justice Birdwood.

RAGHUNA'TH GANESH, (ORIGINAL PLAINTIFF), APPELLANT, v.
GANGA'DHAR BHIKA'JI AND OTHERS, (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1885.
July 10.

*Court Fees' Act VII of 1870, Sec. 7, Cl. iv (c)—Suit for a declaration and injunction
—Stamp—Consequential relief.*

The plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain *devasthán* immoveable and moveable property. His plaint, which bore a ten-rupee stamp, contained a prayer for an injunction. The Subordinate Judge rejected the plaintiff's claim on the ground that he had not paid the proper stamp fees. On appeal to the High Court,

Held, that the plaint was insufficiently stamped. The injunction prayed for would be consequential relief, and clause iv (c) of section 7 of the Court Fees' Act VII of 1870 was, therefore, applicable. The appellant was, accordingly, required to state in the memorandum of appeal at what amount he valued the relief sought, in order that the fee might be computed.

This was a reference by the Taxing Officer, High Court, under section 5 of the Court Fees' Act VII of 1870. The reference ran as follows:—

“The memorandum of appeal in the case has been referred to me to determine what is the proper Court fee payable on it.

“The suit is to obtain a declaration that the plaintiff is entitled to have the exclusive management of certain *devasthán* immoveable and moveable property attached to an idol at Dháwadshi, in the Sátára District.

“The plaint bore a stamp of Rs. 10. The First Class Subordinate Judge of Sátára raised, among others, the issue as to whether the plaint was properly stamped or not, and decided it against the plaintiff in the negative. The Subordinate Judge held that, though the suit was one for a mere declaration, its real object was to obtain an injunction. Consequently, it came under clause iv (d), section 7, Act VII of 1870. He further held that, if the Court granted the prayer of the plaintiff, the declaration itself would involve the grant of consequential relief,—that is to say, it would enable the plaintiff, among other things, to receive the revenue of certain villages to the amount of Rs. 10,000 a year.

* Reference under section 5 of the Court Fees' Act, 1870.

Plaintiff not having paid the requisite stamp, the Subordinate Judge rejected the plaintiff's claim.

"An appeal has been filed against the order, and the main contention of the appellant is that the view taken by the Subordinate Judge as regards the valuation of the claim and the applicability of the sections of the Court Fees' Act as laid down by him is erroneous. This being so, a taxing officer would be exceeding his power were he to take upon himself to decide the very question on which the appellant, by the memorandum of his appeal, seeks for a judicial decision of the Court after argument on both the sides. He would be virtually usurping the powers of the Court, and would be in reality assuming to himself the appellate powers over Subordinate Judges. In this view of the case, I think the memorandum of appeal would be sufficiently stamped, if appellant pays the same amount of Court fees which he paid on his plaint in the Court of first instance.

"I think it will be well to lay down a rule for the guidance of the office, that when an appeal is presented against a decree passed under para. (a), section 54, Civil Procedure Code, the office should not go into the question of the Court fees beyond seeing that the same amount of Court fee as had been paid on the plaint is paid on the memorandum of appeal.

"As the question is, in my humble opinion, of general importance and likely to frequently arise, I respectfully submit this for the decision of the Hon'ble the Chief Justice under section 5 of Act VII of 1870."

Mahadev Chimnaji Apte for the appellant.

BIRDWOOD, J.—The plaint is not before the Court, but it is admitted by Mr. Apte, who appears for the appellant, the plaintiff in the Court below, that an injunction was prayed for in the plaint, as well as a declaratory decree. The injunction prayed for would be consequential relief; and clause iv (c) of section 7 of the Court Fees' Act is, therefore, applicable to the case. The Court fee must, under that clause, be computed "according to the amount at which the relief sought is valued in the * * * memorandum of appeal." The appellant should be required to state in the memorandum of appeal at what amount he values the relief sought, and the fee can then be computed.

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